In the Supreme Court of the United States

October Term, 1975

NO. 75-1494

SAUL G. SCHENKER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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AUTHORITIES CITED

LEGISLATIVE HISTORY

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FOR THE NINTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment herein of the United States Court of Appeals for the Ninth Circuit entered in the above-entitled case on January 26, 1976, petition for rehearing and request for rehearing en banc denied on March 17, 1976.

OPINIONS BELOW

The opinion of the United States District Court for the District of Arizona of June 23, 1975, denying petitioner's motion for post-conviction relief, later changed by the Court to a proceeding pursuant to 28 U.S.C. 2255, was not reported and no written opinion was rendered.

The opinion of the United States Court of Appeals affirming the judgment of the said District is set out in Appendix A.

The order of the Court of Appeals denying petitioner's petition for rehearing and request for rehearing en banc is set out in Appendix B.

JURISDICTION

The judgment of the Court of Appeals (Appendix A) was entered on January 26, 1976, and a petition for rehearing and a request for rehearing en banc were denied by the Court of Appeals on March 17, 1976. Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Did the Court of Appeals err by holding that the word "and" in 15 U.S.C. 1703(a)(1), (being the last word thereof), really means "or"?

STATUTES AND REGULATIONS INVOLVED

The interpretation of 15 U.S.C. 1703(a)(1), the portion of which involved here not having been previously interpreted.

STATEMENT OF THE CASE

On February 7, 1974, the Grand Jury in the United States District Court for the District of Arizona returned a multiple count indictment against several defendants, among

whom was the petitioner. On September 24, 1974, petitioner entered a plea of guilty to Count VIII of the Indictment. This count alleges a violation of 15 U.S.C. 1703(a)(1). After acceptance of that plea by the Court, petitioner was sentenced on May 5, 1975 to a sentence of three years imprisonment and a fine in the amount of $5,000. Execution of that sentence was stayed until July 7, 1975. Also on May 5, 1975, petitioner filed a motion for post-conviction relief.

On June 23, 1975, the Trial Court granted the Government's motion to consider the motion for post-conviction relief as an application under 28 U.S.C. 2255 and transferred it to the civil docket. The application was thereupon denied on the merits by the Trial Court, execution of sentence was stayed pending appeal.

A copy of the indictment is attached as Appendix C.

It is to be noted that petitioner pleaded guilty only to Count VIII and persists in his pleas of not guilty to the remaining counts. The even numbered counts of the indictment regarding Interstate Land Sales Act allege substantially a failure to furnish the purchaser with a copy of the property report, whereas the odd numbered counts relate to fraud.

REASONS FOR GRANTING THE WRIT

THE COURT OF APPEALS HAD INTERPRETED A FEDERAL STATUTE IN A WAY THAT CONFLICTS WITH ORDINARY ENGLISH AND WITH APPLICABLE PRIOR DECISIONS OF THIS COURT.

Both the District Court and the Court of Appeals relied upon the legislative history of this comparatively new statute as pronounced by statements made by Senators Mondale and Williams at the time the bill was being considered in the United States Congress and disregarded the plain meaning of the word "and." Significantly, at no time has the Government contended nor have the courts declared the statute to be ambiguous. It is our position that legislative history is

immaterial in interpreting an unambiguous statute. To our knowledge, this Court has so held on two occasions:

> *Wilbur v. United States,* 284 U.S. 231, 52 S.Ct. 113.
> This case was decided in 1931. The opinion was written by Mr. Justice Butler. He stated on page 237 as follows:
>
> > "And, in support of his contention, petitioner invokes history of the legislation, but that is not here permissible, for the language and meaning of the statute in respect of the question under consideration are clear. *United States v. Missouri Pacific R. Co.*, 278 U.S. 269, 278."
>
> *Fairport, Painesville & Eastern Railroad Co. v. Meredith,* 292 U.S. 589, 54 S.Ct. 826.
> This case was decided in 1934. The opinion was written by Mr. Justice Sutherland. He stated on page 594 as follows:
>
> > "The title of an act and the history leading up to its adoption, as aids to statutory construction, are to be resorted to only for the purpose of resolving doubts as to the meaning of the words used in the act of ambiguity. *Patterson v. Bark Eudora,* 190 U.S. 169, 172; *Cornell v. Coyne,* 192 U.S. 418, 430; *Lapina v. Williams,* 232 U.S. 78, 92. Compare *Russell Motor Car Co. v. United States,* 261 U.S. 514, 519, 522."

Petitioner pleaded guilty to a subsection of a statute which constitutes only half the elements of the crime as defined by Congress. Count IX of the Indictment charges the other half of the elements but appellant pleaded not guilty to Count IX and persists in that plea. The entire crime is defined in 15 U.S.C. 1703(a). Significantly, subsection (a) of that section is followed by the word "and" and then comes subparagraph (2), not charged in Count VIII but charged in COUNT IX. We attach a copy of the referred to statute and have underscored the "and" to which we have reference.

The word "and" has generally a cumulative sense, requiring the fulfillment of all of the conditions that it joins

together, and herein it is the antithesis of "or." 1 Stroud's Judicial Dictionary, 135 (3rd Ed. 1952); see also 82 C.J.S. Statutes, Sec. 335, which states in pertinent part that the word "and" in a statute is generally considered a "conjunctive."

This simple rule of statutory construction can be illustrated by analogizing to two common crimes which are proscribed by the Arizona Revised Statutes. Thus, Sec. 13-452, Degrees of Murder, states as follows:

> "A murder which is perpetrated by means of poison or lying in wait, torture or by any other kind of *willful, deliberate and premeditated* killing, . . . is murder of the first degree. . . ."

Clearly the elements of the crime of first degree murder embrace conduct and a state of mind which is, in a cumulative sense, (1) willful, (2) deliberate, *and* (3) premeditated. Should any one of those elements be missing, then the crime of first degree murder has not been properly charged. Another example is found in the Arizona Revised Statute dealing with rape. A.R.S. Sec. 13-611, in pertinent part, indicates various conditions under which rape can be committed. Section 5 states:

> "Where the female is at the time unconscious of the nature of the act, *and* this is known to the accused." (Emphasis added.)

Also Section 6 of that same statute:

> "Where the female submits under a belief that the person committing the act is her husband, *and* this belief is induced by any artifice, pretense or concealment. . . ." (Emphasis added.)

Clearly to charge the crime of rape and also to find someone guilty of that crime, each of those elements in A.R.S. Sec. 13-611, Subsections 5 and 6 must be charged and found.

The law is that criminal statutes must be strictly construed in favor of the accused. See generally Modern Federal

Practice Digest, Key No. 241(1), Statutes. Any doubts or conflict in the interpretation of a criminal statute must be resolved in favor of tne accused. *United States v. Canton*, 470 F.2d 861 (2nd Cir. 1972). Any ambiguity in the meaning of a penal statute is not to be solved by interpreting it to embrace an offense not clearly within its terms and any doubt concerning its meaning must be resolved against broadening its scope. *United States v. Crouch*, 224 F. Supp. 969 (D.C. Del. 1964).

The failure of an indictment to charge an offense "shall be noticed by the Court at any time during the pendency of the proceedings." Rule 12 (b)(2), Federal Rules of Criminal Procedure; this includes the right to raise this defense after completion of the Government's case, *United States v. Berlin*, 472 F.2d 1002 (2nd Cir. 1973), *cert. denied*, 93 S.Ct. 3007, 412 U.S. 949, 37 L.Ed.2d 1001, and this defect is so fundamental it even can be raised for the first time on appeal. *Walker v. United States*, 343 F.2d 22 (5th Cir. 1965).

In a multicount indictment each count must be considered as a separate indictment for purposes of ascertaining its sufficiency and each count must be considered by itself. Fed. R. Civ. Proc. Rule 7(c), Title 18, U.S.C.A.; Fed. R. Civ. Proc. Rule 8(a); *United States v. Branan*, 457 F.2d 1062 (6th Cir. 1972); *United States v. Isaacs*, 493 F.2d 1124 (7th Cir. 1974); *United States v. Roberts*, 465 F.2d 1373 (6th Cir. 1972); *United States v. Daneals*, 370 F. Supp. 1289 (D.C. N.Y. 1974).

And, finally, of course, the failure to charge a crime is a fundamental defect requiring dismissal of the Indictment as to all counts failing adequately to charge a crime. *Walker v. United States*, supra; *United States v. Berlin*, supra; *United States v. Beard*, 414 F.2d 1014 (3rd Cir. 1969).

Petitioner maintains that 15 U.S.C. 1703 (a) (1) defines only some of the elements of the conduct proscribed by 15 U.S.C. 1703 (a). Such a position is supported by common sense.

Throughout the legislative comment on S.275 a distinction is consistently made as to what the bill is intended to "provide" and what the bill is intended to "prevent". The over-riding purpose of the "Interstate Land Sales Full Disclosure Act", as declared by Senator Williams of New Jersey, is to provide full disclosure of information to those who buy certain land. 113 *Cong. Rec.* 315 (1967). What is specifically prevented by S.275 is not mere nondisclosure of such information, but rather, fraudulent sales in combination with nondisclosure. Appellant submits that this is the very point of the use of the word "and" to connect section 1703 (a) (1) with section 1703 (a) (2).

The fundamental criminal conduct characteristics of the prohibitions identified by 15 U.S.C. 1703 (a) are clearly fraud and misrepresentation, those elements enumerated by section 1703 (a) (2). Failures to comply with section 1703 (a) (1) are the foundational violations that distinguish the fraud and misrepresentation unique to the land sales area. The Act's provisions requiring the filing of statements of record and the giving of property reports are applicable not only to the criminal prohibitions of section 1703 (a), but also to the civil remedies available under the Act. Section 1703 (a) (1) merely summarizes those provisions for the sole purpose of the statutory reference made by section 1703 (a) (2) and does not in itself charge a crime.

The drafters made repeated and explicitly clear use of the word "or" within section 1703 (a) (2). It would seem obvious that the difference between "and" and "or" and the proper use of both were well understood by the drafters, and further, that the meaning of both should be controlled by the arrangement and the labeling of the paragraphs of the statute. Section 1703 (a) is divided into subsections (1) and (2) and connected by the conjunctive "and". Subsection (2) is further divided into parts (A), (B), and (C) which are connected to the use of divisions and subdivisions in statutory language. Here the significance is to further distinguish "and" from "or".

The use of the conjunctive to connect subsection (1) with subsection (2) and the interpretation that violations of

both sections are needed to charge a crime are certainly consistent with the legislative history of the "Interstate Land Sales Full Disclosure Act". Throughout the legislative history full disclosure remained the theme and fraud was to be the focus of the Act's prohibitions.

A brief review of the legislative comments support the distinction between what the bill "provides" and what the bill "prevents".

When the bill was first introduced and first read in Congress by Senator Williams he called it a bill

> to *provide* full and fair disclosure of the nature of the interests in real estate subdivisions sold through the mails and instruments of transportation or communication in interstate commerce, *and* to *prevent* frauds in the sale thereof, and for other purposes. 113 *Cong. Rec.* 298 (1967) (emphasis supplied)

In receiving S. 275 the Vice President reviewed its provisions distinctly:

> A bill to *provide* for full and fair disclosure of the nature of the interests in real estate subdivisions sold through the mails and instruments of transportation or communication in interstate commerce, *and* to *prevent* frauds in the sale thereof, and for other purposes. 113 *Cong. Rec.* 319 (1967) (emphasis supplied).

On two subsequent occasions when two additional sponsors were added to S. 275 the bill was again referred to in the Senate as a bill to *provide* for full disclosure *and* to *prevent* frauds in the sale of land. See remarks, Senator Bible, January 12, 1967, 113 *Cong. Rec.* 1312; and remarks, Senator Moss of Utah, March 6, 1967, 113 *Cong. Reg.* 5487.

Finally, on July 23, 1968, the Managers on the part of the House reported in joint Senate-House Conference Report No. 1785 that:

> The purpose of full disclosure is to deter or prohibit the sale of land by use of the mails or other channels of interstate commerce *through* misrepresentation of material facts relating to the property. *U.S. Code, Cong. and Admin. News,* 90th Cong. Second sess. Vol. 3, p. 3066.

While Petitioner concedes that the original "Interstate Land Sales Act" would have made *any* violations of *any* of its provisions punishable, the very fact that the final version of the Act does not contain such pervasive provisions supports the arguments made herein. As Senator Fulbright observed, "The proposal [Title XIII of the Housing and Urban Development Act of 1968] is acknowledged to be a vast improvement over the original bill, S. 275 . . ." 114 *Cong. Rec.* 15270 (1967).

It must be admitted that the elimination of certain identities between the Interstate Land Sales Act and the Securities Act of 1933 was purposefully done, and that the streamlining of S. 275 into its present form strongly suggests that the full disclosure provisions of the Act were intended to provide a framework for the conduct of the business of selling land interstate. That intent is clearly manifest in section 1703 (a). The full disclosure provision of 1703 (a) (1) provides the framework to identify the fraud of section 1703 (a) (2) that is unique to interstate land sales. Both sections are needed to complete the concept of fraud proscribed by the statute.

Petitioner suggests that the conjunctive is a connective and is not generally used to express an alternative unless followed by words which clearly indicate that intent. The language that follows the conjunctive ending section 1703 (a) (1) clearly refers back to the "selling or leasing" previously described and not to any alternative. The clear intent of the word is to connect two necessary elements of one idea.

In order to ignore the plain meaning of the word "and", this Court must violate the rule of statutory construction that criminal statutes must be strictly construed in favor of the defendant. That rule requires that the word "and" will not in general be construed as "or" to the disadvantage of the accused. *Williams v. United States,* 87 p. 647, 648, 17 Okla. 28, citing *United States v. Ten Cases of Shawls,* 28 Fed. Cas. 35. Petitioner urges this Court to recognize these authorities

and to reaffirm the rule of strict construction of penal statutes, as there is no reason supplied by the legislative history of 15 U.S.C. 1703 to depart from a long standing position.

CONCLUSION

Petitioner believes that "and" means "and," that statements by members of Congress are immaterial in the consideration of an unambiguous statute, and that the indictment has in each instance split the same crime into two counts resulting in the failure of the even numbered counts, including Count VIII, to charge a crime.

For the reasons set forth above, petitioner prays that this petition for writ of certiorari be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SAUL G. SCHENKER,
Plaintiff-Appellant,

vs.

UNITED STATES OF AMERICA,
Defendant-Appellant.

No. 75-2487

OPINION

[January 26, 1976]

Appeal from the United States District Court
for the District of Arizona

Before: KOELSCH and HUFSTEDLER, Circuit Judges, and ORRICK,* District Judge.

ORRICK, District Judge:

Defendant, Saul G. Schenker, appeals the denial of post-conviction relief requested pursuant to 28 U.S.C. §2255 (1948). Schenker was charged, along with several codefendants in a multicount indictment, with violations of the Interstate Land Sales Act (the Act). 15 U.S.C. §1703 (1968). The statute provides in pertinent part:

> "(a) It shall be unlawful for any developer or agent, directly or indirectly, to make use of any means or

*Honorable William H. Orrick, Jr., United States District Judge for the Northern District of California, sitting by designation.

instruments of transportation or communication in interstate commerce, or of the mails–

> (1) to sell or lease any lot in any subdivision unless a statement of record with respect to such lot is in effect in accordance with section 1706 of this title and a printed property report, meeting the requirements of section 1707 of this title, is furnished to the purchaser in advance of the signing of any contract or agreement for sale or lease by the purchaser; and
>
> (2) in selling or leasing, or offering to sell or lease, any lot in a subdivision–
>
> (A) to employ any device, scheme, or artifice to defraud, or
>
> (B) to obtain money or property by means of a material misrepresentation with respect to any information included in the statement of record or the property report or with respect to any other information pertinent to the lot or the subdivision and upon which the purchaser relies, or
>
> (C) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser."

Defendant was charged with violating subsections (a)(1) and (a)(2) of the Act in separate counts of the indictment. He pled guilty to Count VIII of the indictment which charged him with violating subsection (a)(1) by failing to file a statement of record for subdivision property to be sold. He pled not guilty to Count IX of the indictment which charged him with violating subsection (a)(2) by employing a scheme and artifice to defraud in the sale of property. The sole question on appeal is whether 15 U.S.C. §1703(a)(1) standing alone charges a crime. We hold that it does.

Appellant points to the conjunctive term "and" joining subsections (a)(1) and (a)(2) of the statute, and argues that all of the elements of both of these subsections must be fulfilled before there is a violation of law. However, the legislative

history of the statute establishes that Congress intended each subsection of the Act to constitute a separate and independent crime.

The Act was originally introduced in response to an increase in fraudulent sales that were eroding public confidence in the land sales industry. The original senate bill[1] was modeled on the Securities Act of 1933 (15 U.S.C. §77a *et seq.*) which makes it illegal to sell any security interstate without first filing a registration statement (15 U.S.C. §77e); and also makes it illegal to sell securities interstate by any fraudulent means (15 U.S.C. §77q). In introducing the bill, Senator Williams made it clear that these dual principles of full disclosure were also to operate independently in the land sales industry. He stated that under the proposed law:

> "It would be illegal to sell the land unless the registration statement was in effect." 113 Cong. Rec. 316 (1967).

Later in the same comments he indicated:

> "Another protection for the purchaser would be the right to sue the developer for damages if his purchase was made on the basis of misstatements or omissions of fact. In addition, this bill would make it unlawful to sell lots in a subdivision by the use of fraudulent devices or practices, or by using misstatements of facts or misleading facts." 113 Cong. Rec. 316 (1967).

In enacting the Act, Congress was trying to supplement the existing fraud statutes (18 U.S.C. §1341 (1948) *et seq.*) by imposing a separate affirmative duty on a land dealer to disclose all information, good and bad, about the property to be let or sold. This was to be achieved by requiring statements of record to be filed. As stated by Senator Mondale, a cosponsor of the original senate bill:

> "Fraud statutes meet a fundamental problem here of the person who affirmatively misrepresents a fact, who openly lies about something that is false. The fraud statute will help reach that problem, but we are trying to

[1] S. Bill 275, 90th Cong., 1st Sess. (1967).

get at a different objective here, one in addition to fraud. That is the affirmative responsibility on one who sells real estate in interstate commerce, in most cases sight unseen, to affirmatively tell all of the facts, the bad as well as the good, and it is a different principle that we are trying to achieve in this measure that has to be clearly understood." 113 Cong. Rec. 317.

Unlike the fraud statutes that were aimed at remedying deceptions that had already occurred, the Act was to provide additional before-the-fact protections. Senator Williams made this clear in referring to the final version of the Act:

> "Most federal procedures now in effect are after-the-fact measures which are used only after the harm has been done, the fraud perpetrated, the buyer bilked. We need before-the-fact protection." 114 Cong. Rec. 15271.

Under the existing after-the-fact fraud statutes the government only needed to establish that an instrument in interstate communication or the mails had been used in furtherance of a scheme to defraud. However, under appellant's conjunctive theory requiring proof of all the elements in both subsections (a)(1) and (a)(2) of the Act, the government would have to prove far more. Appellant would require the government to prove that (1) the mails or facilities of interstate commerce were used (2) in selling or leasing or offering to sell or lease (3) a lot in a subdivision (4) while employing a scheme to defraud, and (5) actually selling or leasing such a lot (6) which did not have a statement of record filed with respect to it, and (7) no printed property report was given to the purchaser in advance of signing the contract for sale. This would lead to the illogical result that a statute aimed at expanding control over the land sales industry actually imposed a higher standard on the prosecution than was demanded under the very legislation the new act was intended to supplement. We reject such a statutory construction.

The denial of the 28 U.S.C. §2255 motion for post-conviction relief was correct. AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SAUL G. SHENKER, *Plaintiff-Appellant,*	)	
vs.	)	No. 75-2487
UNITED STATES OF AMERICA, *Defendant-Appellee.*	)	

Before: KOELSCH and HUFSTEDLER, Circuit Judges, and ORRICK,* District Judge.

ORDER DENYING PETITION FOR REHEARING AND REJECTING SUGGESTION FOR REHEARING IN BANC

The panel, as constituted in the above case, voted to deny the petition for a panel rehearing. Judge Hufstedler voted against a rehearing in banc, and Judges Koelsch and Orrick recommended that a rehearing in banc be rejected.

The full court has been advised of the suggestion for an in banc hearing, and no judge of the court has requested a vote on the suggestion for rehearing in banc. F. R. App. P. 35(b).

The petition for rehearing is denied, and the suggestion for a rehearing in banc is rejected.

*The Honorable William H. Orrick, Jr., United States District Judge for the Northern District of California, sitting by designation.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, Plaintiff, vs. DEL RIO SPRINGS, INC., an Arizona corporation, HOWARD NEIL WOODALL, RICHARD STANTON JOHNSON, RICHARD L. BATES, CLIFFORD GLEN BEEBE, EUGENE DEWITT, SAUL G. SCHENKER, MARTIN ANTHONY CLANCEY, and WILLIAM ROBERT BOLLEN, Defendants.	I N D I C T M E N T CR 74-48 PHX VIO: 18 U.S.C. §1341 Mail Fraud 15 U.S.C. §1703(a)(1) Failure to Register and Provide Property Report 15 U.S.C. §1703(a)(2) Fraudulent Misrepresentation 18 U.S.C. §2 Aiding and Abetting 18 U.S.C. §2314 Interstate Transportation of Forged Securities 15 U.S.C. §1717

THE GRAND JURY CHARGES:

COUNT I

1. That at all times hereinafter mentioned, Del Rio Springs, Inc. was a company organized under the laws of the State of Arizona and was doing business in the State of Arizona and elsewhere.

2. That at the times hereinafter mentioned, Howard Neil Woodall, Richard Stanton Johnson, and Richard L. Bates were officers, principals, and agents of said Del Rio Springs, Inc. and Clifford Glen Beebe, Eugene DeWitt, Saul G. Schenker, Martin Anthony Clancey, and William Robert Bollen were agents of said Del Rio Springs, Inc.

3. From in or about March 1971 and continuing to in or about April 1973, Del Rio Springs, Inc., Howard Neil Woodall, Richard Stanton Johnson, Richard L. Bates, Clifford Glen Beebe, Eugene DeWitt, Saul G. Schenker, Martin Anthony Clancey, and William Robert Bollen, hereinafter referred to as "defendants" devised and intended to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises from persons including:

Mr. and Mrs. Albert Bushkovski
2695 Quitman Street
Denver, Colorado

Mr. and Mrs. Clarence Dreiling
2610 South Lowell Boulevard
Denver, Colorado

Mr. and Mrs. William H. Haas
18051 Los Angeles Avenue
Homewood, Illinois

Mr. and Mrs. James M. Larson
6004 West Jewell Avenue
Lakewood, Colorado

Mr. and Mrs. Francis W. Waldo
2315 East 12th Avenue
Denver, Colorado

Mr. and Mrs. William Hilbert
498 Fulton Street
Aurora, Colorado 80010

Mr. and Mrs. Richard M. Jarrett
5686 South Lowell Boulevard
Littleton, Colorado 80123

Mr. and Mrs. David A. Matthews
415 South Owens Street
Denver, Colorado 80226

Mr. and Mrs. Richard D. Pyle
11155 East Vassar Drive
Denver, Colorado 80232

Mr. and Mrs. Delbert L. Thomas
P. O. Box 631
Lexington, Oklahoma 73051

and such other persons who could be and would be induced by the "defendants" to purchase and agree to purchase real property from Del Rio Springs, Inc. well knowing at the time that the said pretenses, representations and promises, some of which are specifically described in Paragraph 6 hereinafter, would be and were false when made.

4. It was part of said scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises that the "defendants" would and did acquire certain real property in Yavapai County, Arizona, some of said property being a part of a defunct prior development promoted for resale beginning in approximately 1961.

5. It was a further part of said scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises:

a. That Howard Neil Woodall and others would and did form the defendant corporation, Del Rio Springs, Inc., on or about June 8, 1971;

b. That said "defendants" would and did obtain a motion picture film made in approximately 1964 to promote the said prior defunct development in Yavapai County; and that said defendants would and did cause Diversified Marketing, Inc., Denver, Colorado, to create a condensed version of the said motion picture for showing on television in the Denver, Colorado area as part of their sales presentation, knowing full well that said film did not depict an accurate current state of conditions for the said real property;

c. That the "defendants" would and did acquire old promotional literature prepared for the said prior defunct land development in Yavapai County and, obtain reprints of said materials for use in their own sales activities, knowing

full well that the said literature did not depict an accurate current state of conditions for the said real property.

d. That "defendants" would and did establish a sales organization in Denver, Colorado, and further that all representatives of Del Rio Springs, Inc. in said state were designated employees or officers of Del Rio Springs, Inc.

e. That the "defendants" would and did offer for sale, sell and cause to be sold lots and parcels of real property located in Yavapai County, Arizona, commonly known as Del Rio Springs, portions of which were defined as but not limited to, Antelope Lakes, Antelope Vista, Wineglass, Wineglass Lake Estates, Del Rio Air Park Estates, and Del Rio Shopping Center.

f. That the "defendants" would and did induce persons to be defrauded by means of all and any part of, but not limited to, the false and fraudulent pretenses, representations and promises, hereinafter described in Paragraph 6 to purchase lots and parcels of real property in a subdivision located in Yavapai County, Arizona, commonly known as Del Rio Springs, and further described in Paragraph 5e herein, well knowing at the time that said pretenses, representations and promises would be and were false and fraudulent when made.

6. It was a further part of the scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises that the "defendants" would and did make any and all of, but not limited to, the following false and fraudulent pretenses, representations and promises:

a. That railroad sidings and highway frontage property was available within the Del Rio Springs development;

b. That Del Rio Springs was a development of 110,000 acres covering approximately 35 sections of land;

c. That 26 miles of natural gas pipelines had been

recently laid down by Del Rio Springs;

d. That Del Rio Springs, Inc. had net assets of more than $22,000,000 and an additional $11,000,000 in land inventory;

e. That Wineglass Lake was to be filled within six months and the runoff water from this lake was to fill the other eight lakes located on the Del Rio Springs development;

f. That one lake had a stream running into it and that all the lakes would be completed by the end of summer 1972;

g. That a clubhouse was being constructed next to a lake;

h. That streets were completed and paved;

i. That when enough homes were built a central sewage system would be hooked up with the county system;

j. That electric power and natural gas was available to each lot at the present time;

k. That William Bollen had visited the property several times and that on each trip he observed more homes being constructed;

l. That there were about twenty homes already constructed and other homes were presently under construction;

m. That a major chain motel would be built and finished by December 1972;

n. That Holiday Inn was interested in building a motel in the area within a year but that Del Rio Springs had found someone else to build the motel within the next 30 to 60 days;

o. That an industrial park was discussed to the effect that several large companies had already made commitments to locate at Del Rio Springs;

p. That a large electronics firm had already

purchased land and will be building in the near future;

q. That a school would be built at Del Rio Springs in the near future;

r. That an area was reserved for a shopping center and that several known companies like Penney's, Safeway, and Ward's had contacted Del Rio Springs expressing an interest to build stores there;

s. That Del Rio Springs donated 25 acres to Danny Thomas who will build St. Jude's Hospital, construction to start in 1973;

t. That St. Jude's Hospital was going to be built within the year; that construction of the hospital was delayed as the hospital was to be increased from a 150-bed to a 200-bed hospital, and that Danny Thomas was going to build the hospital;

u. That Danny Thomas had specifically chosen Del Rio Springs for construction of a three-story hospital;

v. That the air strip could accommodate the landing of a Convair 580-type aircraft similar to the ones used by Frontier Airlines;

w. That Del Rio Springs had just obtained possession of the Wineglass Ranch;

x. That Wineglass Ranch Unit I had been under development for the past six months and that construction on the unit was well under way;

WHEREAS, in truth and in fact, as the "defendants" well knew at the time, the aforesaid pretenses, representations and promises were false and fraudulent when made.

7. It was a further part of said scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises that the "defendants" would and did offer for sale, sell and cause

to be sold certain of said lots and parcels of real property which were not registered and otherwise in violation of the Interstate Land Sales Act; and, further that small portions of said real property would be and were registered with the Offic of Interstate Land Sales in an attempt to mislead and lull prospective purchasers and government authorities.

8. It was a further part of said scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises that the "defendants" would sell, cause to be sold, transport and cause to be transported in interstate commerce forged and falsely made securities.

9. On or about the 5th day of July, 1972, the "defendants" for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, caused to be delivered by mail according to the direction thereon at Phoenix, within the District of Arizona, a letter containing a check in the amount of $298.84 mailed by Albert J. Bushkovski, Denver, Colorado, addressed to Central Service Bureau, Phoenix, Arizona.

In violation of Title 18, U.S.C. §1341 and Title 18, U.S.C. §2.

COUNT II

1. The Grand Jury re-alleges all of the allegations contained in Paragraphs 1 through 8 of Count I of this indictment and further alleges:

2. On or about the 26th day of June, 1972, the "defendants" for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, caused to be placed in an authorized depository for mail matter at Phoenix, within the District of Arizona, a letter addressed to Mr. and Mrs. Dreiling, Denver, Colorado, with the return address of

of Del Rio Springs, Inc., Phoenix, Arizona to be sent and delivered by the United States Postal Service according to the directions thereon.

In violation of Title 18, U.S.C. §1341 and Title 18, U.S.C. §2.

COUNT III

1. The Grand Jury re-alleges all of the allegations contained in Paragraphs 1 through 8 of Count I of this indictment and further alleges:

2. On or about the 10th day of April, 1972, the "defendants," for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, caused to be delivered by mail according to the direction thereon at Phoenix, within the District of Arizona, a letter containing a check, in the amount of $73.67 mailed by William H. Haas, Homewood, Illinois, addressed to Central Service Bureau, Phoenix, Arizona.

In violation of Title 18, U.S.C. §1341 and Title 18, U.S.C. §2.

COUNT IV

1. The Grand Jury re-alleges all of the allegations contained in Paragraphs 1 through 8 of Count I of this indictment and further alleges:

2. On or about the 1st day of May, 1972, the "defendants," for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, caused to be delivered by mail according to the direction thereon at Phoenix, within the District of Arizona, a letter containing a check in the amount of $44.75 mailed by James M. Larson, Lakewood, Colorado, addressed to Central Service Bureau, Phoenix, Arizona.

In violation of Title 18, U.S.C. §1341 and Title 18, U.S.C. §2.

COUNT V

1. The Grand Jury re-alleges all of the allegations contained in Paragraphs 1 through 8 of Count I of this indictment and further alleges:

2. On or about the 30th day of January, 1973, the "defendants," for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, caused to be delivered by mail according to the direction thereon at Phoenix, in the District of Arizona, a letter mailed by Francis W. Waldo, Denver, Colorado, addressed to Del Rio Springs, Inc., Phoenix, Arizona.

In violation of Title 18, U.S.C., §1341 and Title 18, U.S.C. §2.

COUNT VI

1. The Grand Jury re-alleges all of the allegations contained in Paragraphs 1 through 8 of Count I of this indictment and further alleges:

2. On or about the 18th day of February, 1972, and continuing until in or about April, 1973, the "defendants" as set forth and defined in Paragraphs 1, 2, and 3 of Count I of this indictment, except for William R. Bollen, all of whom were then and there and at all pertinent times mentioned herein developers and agents as defined in 15 U.S.C. §1701 (4)(5), did within the Districts of Arizona and Colorado directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails; to-wit: an Agreement for Deed was transported from the State of Colorado to the State of Arizona, to sell, offer and cause to be sold a lot described as: Lot 60 Antelope Lakes Unit 5 of Del Rio Springs, a subdivision

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as defined in 15 U.S.C. §1701(3) and not subject to any of the exemptions of 15 U.S.C. §1702, located within the District of Arizona, which lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; nor was a Printed Property Report meeting the requirements of §1707 of Title 15, United States Code, furnished to the purchaser, William Hilbert, in advance of signing a contract and agreement for deed or sale between said William Hilbert and the seller, Del Rio Springs, Inc.; all in violation of Title 18, U.S.C. §2, Title 15, U.S.C. §1703(a)(1) and Title 15, U.S.C. §1717.

COUNT VII

1. The Grand Jury re-alleges all of the allegations contained in Paragraphs 1 through 8 of Count I of this indictment and further alleges:

2. On or about the 18th day of February, 1972, and continuing until in or about April, 1973, the "defendants" as set forth and defined in Paragraphs 1, 2, and 3 of Count I of this indictment, except for William R. Bollen, all of whom were then and there and at all pertinent times mentioned herein, developers and agents as defined in 15 U.S.C. §1701 (4)(5), did within the Districts of Arizona and Colorado directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails; to-wit: an Agreement for Deed was transported from the State of Colorado to the State of Arizona in selling, offering to sell, and causing to be sold a lot described as: Lot 60 in Antelope Lakes Unit 5 of Del Rio Springs, a subdivision as defined in 15 U.S.C. §1701(3) and not subject to any of the exemptions of 15 U.S.C. §1702, located within the District of Arizona, and; did employ a

device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said lot and the said subdivision, and upon which the purchaser, William Hilbert, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs 1 through 8 of Count I of this indictment and here re-alleged; all in violation of 18 U.S.C. §2, Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COUNT VIII

1. The Grand Jury re-alleges all of the allegations contained in Paragraphs 1 through 8 of Count I of this indictment and further alleges:

2. On or about the 7th day of March, 1972, and continuing until in or about April, 1973, the "defendants" as set forth and defined in Paragraphs 1, 2, and 3 of Count I of this indictment, all of whom were then and there and at all pertinent times mentioned herein, developers and agents as defined in 15 U.S.C. §1701(4)(5), did within the Districts of Arizona and Colorado directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails; to-wit: a Purchase and Sale Agreement was transported from the State of Colorado to the State of Arizona, to sell, offer and cause to be sold a lot described as: Lot 5, Unit 4, Del Rio Springs, a subdivision as defined in 15 U.S.C. §1701(3) and not subject to any of the exemptions of 15 U.S.C. §1702, located within the District of Arizona, which lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; nor was a Printed Property

Report meeting the requirements of §1717 of Title 15, United States Code, furnished to the purchaser, Richard M. Jarrett, in advance of signing a contract and agreement for deed or sale between said Richard M. Jarrett and the seller, Del Rio Springs, Inc.; all in violation of Title 18, U.S.C. §2, Title 15, U.S.C. §1703(a)(1) and Title 15, U.S.C. §1717.

COUNT IX

1. The Grand Jury re-alleges all of the allegations contained in Paragraphs 1 through 8 of Count I of this indictment and further alleges:

2. On or about the 7th day of March, 1972, and continuing until in or about April, 1973, the "defendants" as set forth and defined in Paragraphs 1, 2, and 3 of Count I of this indictment, all of whom were then and there and at all pertinent times mentioned herein, developers and agents as defined in 15 U.S.C. §1701(4)(5), did within the Districts of Arizona and Colorado directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails; to-wit: a Purchase and Sale Agreement was transported from the State of Colorado to the State of Arizona, in selling, offering to sell, and causing to be sold a lot described as: Lot 5, Unit 4, Del Rio Springs, a subdivision as defined in 15 U.S.C. §1701(3) and not subject to any of the exemptions of 15 U.S.C. §1702, located within the District of Arizona, and; did employ a device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said lot and the said subdivision, and upon which the purchaser, Richard M. Jarrett, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically

set forth in Paragraphs 1 through 8 of Count I of this indictment and here re-alleged; all in violation of 18 U.S.C. §2, Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COUNT X

1. The Grand Jury re-alleges all of the allegations contained in Paragraphs 1 through 8 of Count I of this indictment and further alleges:

2. On or about the 24th day of April, 1972, and continuing until in or about April, 1973, the "defendants" as set forth and defined in Paragraphs 1, 2, and 3 of Count I of this indictment, except for Clifford Glen Beebe, all of whom were then and there and at all pertinent times mentioned herein, developers and agents as defined in 15 U.S.C. §1701 (4)(5), did within the Districts of Arizona and Colorado directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails; to-wit: a Purchase and Sale Agreement was transported from the State of Colorado to the State of Arizona to sell, offer and cause to be sold a lot described as: Lot 61, Unit 5, Del Rio Springs, a subdivision as defined in 15 U.S.C. §1701(3) and not subject to any of the exemptions of 15 U.S.C. §1702, located within the District of Arizona, which lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; nor was a Printed Property Report meeting the requirements of §1707 of Title 15, United States Code, furnished to the purchaser, David A. Matthews, in advance of signing a contract and agreement for deed or sale between said David A. Matthews and the seller, Del Rio Springs, Inc.; all in violation of Title 18, U.S.C. §2, Title 15, U.S.C. §1703(a)(1) and Title 15, U.S.C. §1717.

COUNT XI

1. The Grand Jury re-alleges all of the allegations contained in Paragraphs 1 through 8 of Count I of this indictment and further alleges:

2. On or about the 24th day of April, 1972, and continuing until in or about April, 1973, the "defendants" as set forth and defined in Paragraphs 1, 2, and 3 of Count I of this indictment, except for Clifford Glen Beebe, all of whom were then and there and at all pertinent times mentioned herein, developers and agents as defined in 15 U.S.C. §1701 (4)(5), did within the Districts of Arizona and Colorado directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails; to-wit: a Purchase and Sale Agreement was transported from the State of Colorado to the State of Arizona in selling, offering to sell and causing to be sold a lot described as: Lot 61, Unit 5, Del Rio Springs, a subdivision as defined in 15 U.S.C. §1701(3) and not subject to any of the exemptions of 15 U.S.C. §1702, located within the District of Arizona, and; did employ a device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said lot and the said subdivision, and upon which the purchaser, David A. Matthews, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs 1 through 8 of Count I of this indictment and here re-alleged; all in violation of Title 18, U.S.C. §2, Title 15, U.S.C. §1703(a)(2) and Title 15, U.S.C. §1717.

COUNT XII

1. The Grand Jury re-alleges all of the allegations

contained in Paragraphs 1 through 8 of Count I of this indictment and further alleges:

2. On or about the 28th day of March, 1972, and continuing until in or about April, 1973, the "defendants" as set forth and defined in Paragraphs 1, 2, and 3 of Count I of this indictment, all of whom were then and there and at all pertinent times mentioned herein, developers and agents as defined in 15 U.S.C. §1701(4)(5), did within the Districts of Arizona and Colorado directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails; to-wit: a Purchase and Sales Agreement was transported from the State of Colorado to the State of Arizona, to sell, offer and cause to be sold a lot described as: WGR #1, Lot 31, Del Rio Springs, a subdivision as defined in 15 U.S.C. §1701(3) and not subject to any of the exemptions of 15 U.S.C. §1702, located within the District of Arizona, which lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; nor was a Printed Property Report meeting the requirements of §1707 of Title 15, United States Code, furnished to the purchaser, Richard D. Pyle, in advance of signing a contract and agreement for deed or sale between said Richard D. Pyle and the seller, Del Rio Springs; all in violation of Title 18, U.S.C. §2, Title 15, U.S.C. §1703(a)(1) and Title 15, U.S.C. §1717.

COUNT XIII

1. The Grand Jury re-alleges all of the allegations contained in Paragraphs 1 through 8 of Count I of this indictment and further alleges:

2. On or about the 28th day of March, 1972, and continuing up until in or about April, 1973, the "defendants"

as set forth and defined in Paragraphs 1, 2, and 3 of Count I of this indictment, all of whom were then and there and at all pertinent times mentioned herein, developers and agents as defined in 15 U.S.C. §1701(4)(5), did within the Districts of Arizona and Colorado directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails; to-wit: a Purchase and Sale Agreement was transported from the State of Colorado to the State of Arizona, in selling, offering to sell, and causing to be sold a lot described as: WGR #1, Lot 31, Del Rio Springs, a subdivision as defined in 15 U.S.C. §1701(3) and not subject to any of the exemptions of 15 U.S.C. §1702, located within the District of Arizona, and; did employ a device, scheme and artifice to defraud and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said lot and the said subdivision, and upon which the purchaser, Richard D. Pyle, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs 1 through 8 of Count I of this indictment and here re-alleged; all in violation of Title 18, U.S.C. §2, Title 15, U.S.C. §1703(a)(2) and Title 15, U.S.C. §1717.

COUNT XIV

1. The Grand Jury re-alleges all of the allegations contained in Paragraphs 1 through 8 of Count I of this indictment and further alleges:

2. On or about the 29th day of September, 1971, and continuing up until in or about April, 1973, the "defendants" as set forth and defined in Paragraphs 1, 2, and 3 of Count I of this indictment, except for William R. Bollen, Martin A. Clancey, Saul G. Schenker, and Eugene DeWitt, all of whom

were then and there and at all pertinent times mentioned herein, developers and agents as defined in 15 U.S.C. §1701(4)(5), did within the Districts of Arizona and Oklahoma directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails; to-wit: a Purchase and Sale Agreement was transported from the State of Oklahoma to the State of Arizona, to sell, offer and cause to be sold a lot described as: N 1/2, SW 1/4, SE 1/4, SE 1/4 of Section 28, Township 18 North, Range 2 West, Gila and Salt River Base and Meridian, of Del Rio Springs, a subdivision as defined in 15 U.S.C. §1701(3) and not subject to any of the exemptions of 15 U.S.C. §1702, located within the District of Arizona, which lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; nor was a Printed Property Report meeting the requirements of §1707 of Title 15 of the United States Code furnished to the purchaser, Delbert L. Thomas, in advance of signing a contract and agreement for deed or sale between said Delbert L. Thomas and the seller, Del Rio Springs, Inc.; all in violation of Title 18, U.S.C. §2, Title 15, U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717.

COUNT XV

1. The Grand Jury re-alleges all of the allegations contained in Paragraphs 1 through 8 of Count I of this indictment and further alleges:

2. On or about the 29th day of September, 1971, and continuing until in or about April, 1973, the "Defendants" as set forth and defined in Paragraphs 1, 2, and 3 of Count I of this indictment, except for William R. Bollen, Martin A. Clancey, Saul G. Schenker, and Eugene DeWitt, all of whom

were then and there and at all pertinent times mentioned herein, developers and agents as defined in 15 U.S.C. §1701(4)(5), did within the Districts of Arizona and Oklahoma directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails; to-wit: a Purchase and Sale Agreement was transported from the State of Oklahoma to the State of Arizona, in selling, offering to sell, and causing to be sold a lot described as: N 1/2, SW 1/4, SE 1/4, SE 1/4 of Section 28, Township 18 North, Range 2 West, Gila and Salt River Base and Meridian, of Del Rio Springs, a subdivision as defined in 15 U.S.C. §1701(3) and not subject to any of the exemptions of 15 U.S.C. §1702, located within the District of Arizona, and; did employ a device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said lot and the said subdivision, and upon which the purchaser, Delbert L. Thomas, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs 1 through 8 of Count I of this indictment and here re-alleged; all in violation of Title 18, U.S.C. §2, Title 15, U.S.C. §1703(a)(2) and Title 15, U.S.C. §1717.

COUNT XVI

On or about the 10th day of January, 1972, in the District of Arizona, Del Rio Springs, Inc. and Howard N. Woodall, defendants, unlawfully and with fraudulent intent did cause to be transported in interstate commerce from Phoenix, Arizona to Cedar Rapids, Iowa, certain forged and falsely made securities, to-wit: Documents including (1) a Realty Mortgage, (2) a Purchase and Sale Agreement and (3) a Promissory Note,

all three of which were dated January 10, 1972, purportedly signed by Roger D. Bolen, bearing the description of Lot 330, Antelope Lakes Unit 2, according to the Plat of Record in the office of the County Recorder of Yavapai County, Arizona, in Book 8 of Maps, at Page 86; and, all three of which were part of and identified as Del Rio Springs, Inc. Contract No. 400-91 said "defendants" then and there well knowing the said documents to have been forged and falsely made.

All in violation of Title 18, United States Code, Section 2314.

COUNT XVII

On or about the 10th day of January, 1972, in the District of Arizona, Del Rio Springs, Inc. and Howard N. Woodall, defendants, unlawfully and with fraudulent intent did cause to be transported in interstate commerce from Phoenix, Arizona to St. Cloud, Minnesota, certain forged and falsely made securities, to-wit: Documents including (1) a Realty Mortgage; (2) a Purchase and Sale Agreement and (3) a Promissory Note, all three of which were dated January 10, 1972, purportedly signed by Roger D. Bolen, bearing the description of Lot 329, Antelope Lakes Unit 2, according to the Plat of Record in the office of the County Recorder of Yavapai County, Arizona, in Book 8 of Maps, at Page 86; and, all three of which were part of and identified as Del Rio Springs, Inc. Contract No. 400-92, said "defendants" then and there well knowing the said documents to have been forged and falsely made. In violation of Title 18, U.S.C. §2314.

COUNT XVIII

On or about the 3rd day of May, 1972, in the District of Arizona, Del Rio Springs, Inc. and Howard N. Woodall, defendants, unlawfully and with fraudulent intent did cause to be transported in interstate commerce from Phoenix, Arizona

to Plymouth, Massachusetts, certain falsely made securities, to-wit: (1) a Realty Mortgage dated May 3, 1972, No. 50886 in the amount of $2,500.00 with Del Rio Springs, Inc. as mortgagor and Howard E. Vacchi and Ida B. Vacchi as mortgagees, describing certain real property; and (2) a Promissory Note in the amount of $2,500.00 dated May 3, 1972; both of said documents bearing the signature of Howard N. Woodall; said defendants then and there well knowing the said documents to have been falsely made.

All in violation of Title 18, United States Code, Section 2314.

COUNT XIX

On or about the 3rd day of June, 1972, in the District of Arizona, Del Rio Springs, Inc. and Howard N. Woodall, defendants, unlawfully and with fraudulent intent did cause to be transported in interstate commerce from Phoenix, Arizona to Hancock, Michigan, certain falsely made securities, to-wit: a Realty Mortgage dated June 3, 1972, No. 49237 in the amount of $2,500.00 with Del Rio Springs, Inc. as mortgagor and Martha M. Heikkinen and Donna Lee Slining as mortgagees, describing certain real property; and (2) a Promissory Note in the amount of $2,500.00 dated June 3, 1972, both of said documents bearing the signature of Howard N. Woodall; said "defendants" then and there well knowing the said documents to have been falsely made.

All in violation of Title 18, United States Code, Section 2314.

COUNT XX

On or about the 23rd day of June, 1972, in the District of Arizona, Del Rio Springs, Inc. and Howard N. Woodall, defendants, unlawfully and with fraudulent intent did cause to be transported in interstate commerce from Phoenix, Arizona

to Raymond, Minnesota, certain falsely made securities, to-wit: a Realty Mortgage dated June 23, 1972, No. 49635 in the amount of $2,500.00 with Del Rio Springs, Inc. as mortgagor and Harry and/or Dena Wubben as mortgagees, describing certain real property; and (2) a Promissory Note in the amount of $2,500.00 dated June 23, 1972; both of said documents bearing the signature of Howard N. Woodall; said defendants then and there well knowing the said documents to have been falsely made.

All in violation of Title 18, United States Code, Section 2314.

A TRUE BILL

FOREMAN OF THE GRAND JURY
February 7, 1974

WILLIAM C. SMITHERMAN
United States Attorney

Assistant U. S. Attorney

APPENDIX D

UNITED STATES CODE

§1703. *Prohibitions relating to sale or lease of lots in subdivisions; voidability of contracts or agreements.*

(a) It shall be unlawful for any developer or agent, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce, or of the mails–

(1) to sell or lease any lot in any subdivision unless a statement of record with respect to such lot is in effect in accordance with section 1706 of this title and a printed property report, meeting the requirements of section 1707 of this title, is furnished to the purchaser in advance of the signing of any contract or agreement for sale or lease by the purchaser; *and*

(2) in selling or leasing, or offering to sell or lease, any lot in a subdivision–

(A) to employ any device, scheme, or artifice to defraud, or

(B) to obtain money or property by means of a material misrepresentation with respect to any information included in the statement of record or the property report or with respect to any other information pertinent to the lot or the subdivision and upon which the purchaser relies, or

(C) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser.

(b) Any contract or agreement for the purchase or leasing of a lot in a subdivision covered by this chapter, where the property report has not been given to the purchaser in advance or at the time of his signing, shall be voidable at the option of the purchaser. A purchaser may revoke such contract or agreement within forty-eight hours, where he has

received the property report less than forty-eight hours before he signed the contract or agreement, and the contract or agreement shall so provide, except that the contract or agreement may stipulate that the foregoing revocation authority shall not apply in the case of a purchaser who (1) has received the property report and inspected the lot to be purchased or leased in advance of signing the contract or agreement, and (2) acknowledges by his signature that he has made such inspection and has read and understood such report.

Pub. L. 90 – 448, Title XIV, § 1404, Aug. 1, 1968, 82 Stat. 591.